SUPREME COURT, U. S.

FILED

DEC 30 1968

JOHN F. DAVIS, CLERK

No. 888

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

PACIFIC FAR EAST LINE, INC., ET AL., *Petitioners*

v.

PACIFIC SEAFARERS, INC., ET AL., *Respondents*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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December 30, 1968

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Petitioners pray that a writ of certiorari issue to review a judgment of the United States Court of Appeals for the District of Columbia Circuit entered in this case on September 30, 1968, reversing the judgment of the United States District Court for the District of Columbia.

OPINIONS BELOW

The opinion of the Court of Appeals appears as Appendix A (p. 1a, *infra*), and is not yet reported.

The judgment of the United States District Court appears as Appendix B (p. 1b, *infra*), and is not reported.

The opinion of the Federal Maritime Commission appears as Appendix C (p. 1c, *infra*), and is reported at 8 F.M.C. 46 (1965).

JURISDICTION

The judgment of the Court of Appeals for the District of Columbia Circuit was entered on September 30, 1968. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) (1964).

QUESTIONS PRESENTED

(1) Whether an alleged restraint of ocean carriage by American flag vessels of foreign goods for foreign principals between foreign ports is a restraint on the commerce of the United States with foreign nations within the jurisdiction of the Sherman Act?

(2) Whether the financing by AID of such wholly foreign shipments in American flag vessels brings an alleged restraint on such carriage within the jurisdiction of the Sherman Act?

(3) Whether a final and unappealed determination that the factual prerequisite for Sherman Act jurisdiction was not present, made by the Federal Maritime Commission in a contested administrative litigation between these same parties, required dismissal of this subsequent antitrust action based on the same facts and circumstances?

STATUTES INVOLVED

15 U.S.C. § 1	46 U.S.C. § 801
15 U.S.C. § 2	46 U.S.C. § 813
15 U.S.C. § 15	46 U.S.C. § 814

All reproduced in Appendix D (p. 1d, *infra*).

STATEMENT OF THE CASE

Per the opinion of the Court of Appeals (p. 6a, *infra*), "there is no real dispute" concerning the basic jurisdictional facts in this case. The jurisdictional conclusions of the Federal Maritime Commission are a matter of public record. Thus, this case squarely poses two basic legal issues:

(a) The reach of Sherman Act foreign commerce jurisdiction; and

(b) the collateral estoppel effect of the Federal Maritime Commission's decision on issues of fact fully and finally litigated between these parties.

Petitioners are American flag carriers some of whom engage in the carriage of foreign goods from one Far East port to another, commonly known as the "Foreign Interport" trade.* Some petitioners also engage in scheduled round trip voyages between United States and Far Eastern ports pursuant to lawful conference agreements duly filed with The Federal Maritime Commission. (pp. 2c-3c, *infra*).

As part of their foreign interport trade, some petitioners have secured carriage of foreign goods for

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* As the Court of Appeals noted "Liability is alleged as to most of the defendants [petitioners] by virtue of their participation in either the Atlantic and Gulf American-flag Berth Operators (AGAFBO) or the West Coast American-flag Berth Operators (WCAFBO) conferences, rather than from active participation in the Far East interport trade." (p. 2a, *infra*).

foreign principals between foreign Far Eastern ports primarily through commercial advantages arising from the activities of AID. Pursuant to governing statutes and regulations, AID conditions its financing of commodity purchases on the requirement that at least fifty percent of any necessary ocean carriage be by American flag vessels. In addition, AID will finance the cost of ocean carriage itself if 100 percent of financed commodities are carried in American flag vessels. (p. 4a, *infra*).

This Far East interport business was conducted pursuant to a conference agreement (AFBO). The Federal Maritime Commission has held that § 15 of the Shipping Act of 1916 does *not* permit filing for approval of the AFBO agreement—because it does not govern or affect shipping between United States and foreign ports, and because it is not related to, or interdependent with those agreements which govern petitioners' activities in United States foreign commerce. (Appendix C, *infra*).

Respondent, Pacific Seafarers, and its affiliate Seafarers, Inc.,* entered the Far East interport trade solely to compete for the carriage of foreign shipments for foreign principals. Respondents did *not* carry United States Government cargo, and did *not* engage in commercial voyages to or from United States ports. (p. 6a, *infra;* p. 2c, *infra*).

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* Respondents' complaint included as plaintiffs Great Lakes Bengal Lines, Inc., Mid-America Steamship Corp. and J. J. Georgelis, Inc. all of which were owned and managed by the management of Pacific Seafarers and were alleged to have suffered injury consequential to the alleged injury to Seafarers. Petitioners' motion to dismiss these plaintiffs, as well as other motions, were not considered by the District Court because of its jurisdictional dismissal. (Appendix B, *infra*).

Respondents' antitrust complaint alleged that petitioners engaged in a number of actions designed to oust respondents from the nonmilitary Far East interport trade in the transportation of foreign cement and fertilizer for foreign principals from Taiwan/Thailand to South Vietnam, culminating in suspension of the AFBO agreement with respect to rates on certain commodities financed by AID, after which all carriers competed without rate agreements. Respondents allege that thereafter the rates dropped to a low level which eventually forced respondents from the Far East interport trade. (p. 5a, *infra*).

Respondents initiated this case by seeking reparation in a Federal Maritime Commission proceeding under the Shipping Act of 1916 for those same acts now labeled antitrust violations. (J.A. 38-51).*

Petitioners and respondents contested the jurisdiction of the Maritime Commission over activities in the Far East interport trade and the merits of respondents' allegations. After plenary consideration leading to a record of 106 exhibits and 1161 pages of testimony, the Maritime Commission's Hearing Examiner reached an initial decision finding for petitioners on both issues.** (J.A. 54-111).

With respect to Shipping Act jurisdiction, respondents asserted that it should be measured by Sherman Act standards while petitioners argued that only conferences involving United States ports were covered.

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* J.A. refers to the Joint Appendix in the Court of Appeals.

** On the merits, the initial decision concluded that "it was not the Rate Agreement or any 'related agreement,' or even the opening of rates that harmed PSI, but the rates which were independently established following the opening." (J.A. 95).

Petitioners also denied that the factual prerequisites for Sherman Act jurisdiction were present. (J.A. 88-97).

The initial decision did not reach the disputed legal issue, but held on the record that "neither the rate agreement nor any 'related understanding' affected the commerce of the United States," and that AID's financial involvement could not "convert complainant's business into commerce of the United States." (J.A. 103).

On exceptions to the Initial Decision, the Maritime Commission affirmed the jurisdictional dismissal of respondent's complaint. The Commission concurred with the key factual findings in the initial decision that respondents carried only foreign cargo for foreign principals between foreign ports (p. 2c, *infra*), and ruled that the Far East interport trade was not foreign commerce of the United States within the Shipping Act because it did not involve carriage from or to United States ports. (p. 4c, *infra*).

Alternatively, viewing the facts under Sherman Act legal standards put forward by respondent, the Commission found that "the AFBO agreement neither directly nor materially affected our foreign commerce." (p. 9c, *infra*). Moreover, based on the proof as to AID's involvement in these transactions, which was "only in the capacity of a financing institution," the Commission held that AID's involvement "does not convert foreign-to-foreign commerce into foreign commerce of the United States." (p. 5c, *infra*).

Respondents did not exercise their right to appeal from the Maritime Commission's final jurisdictional

dismissal. Instead, months later, respondents commenced this Sherman Act action based on the same facts and alleged injuries. (p. 2a, *infra*).

In the District Court, petitioners moved to dismiss this action because the complaint itself and the Maritime Commission's final unappealed decision established that respondents had not alleged and were precluded by the doctrines of collateral estoppel and primary jurisdiction from alleging a restraint on the commerce of the United States with foreign nations. (p. 3a, *infra*). (J.A. 33-37)

The District Court held it was without jurisdiction over the subject matter of the complaint and dismissed without opinion on the jurisdictional issue. (Appendix B, *infra*).

The Court of Appeals reversed, holding first that the Maritime Commission's final determination, although binding on these parties, did not foreclose Sherman Act jurisdiction because it was based on the Shipping Act rather than the Sherman Act. (p. 6a, *infra*).

Turning to the jurisdictional issue which it considered "res nova," the Court of Appeals acknowledged that Sherman Act jurisdiction could be found only if respondents were engaged in the foreign commerce of the United States, but held that respondents' sales of American flag ocean transportation to foreigners potentially improved the United States balance of payments, and thus were "a form of United States foreign trade." (p. 13a, *infra*). The Court also found Sherman Act jurisdiction supported by a "definite nexus" between the Far East interport trade and "sig-

nificant interests of the United States" based on Congressional interest in our maritime industry and those AID policies which provide commercial advantages to American flag vessels. (pp. 19a-21a, *infra*).

REASONS FOR GRANTING THE WRIT

A. The Decision Below Resolves a Novel and Important Question of Sherman Act Foreign Commerce Jurisdiction Contrary to the Holdings of This Court, Threatening Serious International Conflicts and Hampering the Foreign Activities of American Carriers.

This case presents, in an unclouded jurisdictional posture, and without factual dispute, the question whether the carriage of foreign goods for foreign principals between foreign ports by an American flag vessel is "commerce of the United States with foreign nations" within the meaning of the Sherman Act.

Respondents' antitrust complaint alleged that petitioners attempted to foreclose respondents *only* in their carriage of foreign cement and fertilizer for foreign principals between Thailand Taiwan and South Vietnam. No claim was advanced that respondents made commercial voyages to or from United States ports nor that they carried United States imports, exports or Government cargo. The adverse effect alleged to flow from petitioners allegedly unlawful conduct was exclusion of respondents from this wholly foreign Far East interport trade.

Seventy-seven years of Sherman Act history, the bulk of it written by this Court, make it clear that in determining whether challenged conduct constitutes a forbidden restraint on the "commerce of the United States with foreign nations," the courts in Sherman Act cases must determine whether there is a direct or

material effect on United States foreign commerce by assessing the alleged effects on United States imports and exports or transportation between the United States and foreign ports. See, e.g., *Continental Ore Co. v. Union Carbide & Carbon Corp.*, 370 U.S. 690, 704 (1962) (United States vanadium exports).*

Thus, where there is no substantial effect on United States imports and exports or transportation between the United States and foreign ports, the courts have consistently asserted an absence of Sherman Act jurisdiction even where the alleged perpetrator and victim of the claimed antitrust violations were American nationals. E.g., *American Banana Co. v. United Fruit Co.*, 213 U.S. 347 (1909) (dismissing charges of conspiracy to expropriate American plaintiff's foreign banana plantations); *Alfred Bell & Co. v. Catalda Fine Arts, Inc.*, 191 F. 2d 99, 105 (2d Cir. 1951) (no antitrust violation arises from price fixing agreement "explicitly confined to Great Britain and Ireland" which "did not affect sales in the United States"); *United States v. Aluminum Company of America*, 44 F. Supp.

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* See also *Timken Roller Bearing Co. v. United States*, 341 U.S. 593, 599 (1951) (imports and exports of industrial bearings); *United States v. Sisal Sales Corp.*, 274 U.S. 268 (1927) (United States sisal imports); *United States v. Pacific & Arctic Railway and Navigation Co.*, 228 U.S. 87 (1913) (transportation between United States and Alaska); *Thomsen v. Cayser*, 243 U.S. 66 (1917) (shipping from United States to South Africa); *United States v. Aluminum Company of America (ALCOA)*, 148 F. 2d 416, 444 (2d Cir. 1945) (exports and imports of aluminum ingot); *United States v. Imperial Chemical Industries*, 100 F. Supp. 504, 591-592 (S.D.N.Y. 1951) (exports and imports of explosive powder); *United States v. General Electric Co.*, 82 F. Supp. 753, 891 (D.N.J. 1949) (exports and imports of incandescent lamps); *United States v. Hamburg-Amerikanische P.F.A. Gesellschaft*, 200 Fed. 806 (S.D.N.Y. 1911) (passenger transportation between United States and Europe).

97, 246 (S.D. N.Y. 1941), *aff'd on this point*, 148 F. 2d 416 (2d Cir. 1945) (acquisition of controlling interest in foreign companies whose sales "were wholly or almost wholly confined within the countries where they respectively were located" not within Sherman Act jurisdiction when it had not "directly or materially affected the commerce of the United States"). Cf. *United States* v. *National Lead Co.*, 63 F. Supp. 513, 520, 524 (S.D. N.Y. 1945), *aff'd*, 332 U.S. 319 (1947) (court would be "without jurisdiction" to consider the price fixing and division of territory agreements applicable to Eastern Europe and British Empire "as such"); *United States* v. *Minnesota Mining and Manufacturing Co.*, 92 F. Supp. 947, 958. (D. Mass. 1950) ("It is axiomatic that if over a sufficiently long period American enterprises, as a result of political or economic barriers, cannot export directly or indirectly from the United States to a particular foreign country at a profit, then any private action taken to secure or interfere solely with business in that area, whatever else it may do, does not restrain foreign commerce in that area in violation of the Sherman Act").

In this case, however, while the Court of Appeals recognized that there had "never before been a ruling affirming application of the [Sherman] Act to this kind of trade," it declared the matter "res nova" and proceeded to resolve it on a basis which raises the spectre of unlimited global application of the Sherman Act. (p. 18a, *infra*).

Inevitably, such a doctrine would provoke, as every broad expansion of foreign commerce jurisdiction, "a whole mass of potential conflicts." Whitney, *Sources of Conflict Between International Law and the Antitrust Laws*, 63 Yale L. J. 655, 660 (1954).

Thus, the Court of Appeals first held that respondents were engaged in the foreign commerce of the United States because they were American nationals selling a commercial service to foreigners and thus their earnings might be beneficial to the United States balance of payments. (p. 13a, *infra*).

Under this sweeping principle, *any* commercial activity by Americans abroad, whether related to shipping or not and no matter how local in character, would be considered commerce of the United States with foreign nations *and subject* to the reach of the Sherman Act.*

The practical impact of the Court of Appeals' decision is both widespread and unfortunate. As American businesses engage in ever more extensive foreign operations, the possibility that their foreign activities will be affected by the competitive actions of American or foreign rivals correspondingly mounts. Given the Court of Appeals' ruling that any such restraint of American commercial activities abroad brings the alleged perpetrators within the reach of the Sherman Act, and the accepted extension of the Sherman Act to the acts of foreign nationals abroad, there is a substantial threat of conflict between American courts exercising Sherman Act jurisdiction and foreign courts

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* The Court of Appeals attempted to support its contention that American flag vessels were *ipso facto* engaged in United States foreign commerce by pointing out that the National Labor Relations Act applied to American vessels in foreign interport trades. However, as that court agreed, it is a recognized principle of international law that on-board conduct and regulation of the crew are subject to the laws of the flag nation. *United States* v. *Flores*, 289 U.S. 137 (1933). And Congress has inherent power to regulate such affairs, much as it regulates immigration, as an attribute of sovereignty. See *Knauff* v. *Shaughnessy*, 338 U.S. 537 (1950).

acting under more permissive local commercial regulations. See *Timken Roller Bearing Co.* v. *United States,* 341 U.S. 593 (1951) (Sherman Act prohibits agreements between American, British and French corporations affecting United States imports and exports); *United States* v. *ALCOA,* 148 F. 2d 416, 443 (2d Cir. 1945) (warning of "international complications" from overextensive Sherman Act jurisdiction); *British Nylon Spinners, Ltd.* v. *Imperial Chemical Industries, Ltd.,* 2 All. E.R. 88 (Ct. App. 1952) (refusal to enforce United States antitrust decree as applied to transfer of patents within Great Britain because decree infringed upon "rights and sovereign authority" of British Courts).

This practical problem is particularly compelling in the international maritime industry. As pointed out by this court in *Lauritzen* v. *Larsen,* 345 U.S. 571, 581 (1953):

> "[T]he virtue and utility of sea-borne commerce lies in its frequent and important contacts with more than one country. If, to serve some immediate interest, the courts of each were to exploit every such contact to the limit of its power, it is not difficult to see that a multiplicity of conflicting and overlapping burdens would blight international carriage by sea."

Moreover, the difficulties for American flag carriers are compounded by the lower court's application of the Sherman Act to an area of wholly foreign commerce in which the Maritime Commission will *not* accept for approval conference agreements like AFBO under the Shipping Act. (Appendix C, *infra*); see, e.g., *Investigation of Practices, Operations, Actions*

and Agreements West Coast of Italy, etc., Trade, 7 S.R.R. 515, 531 (1966).

Thus the result of this unprecedented Sherman Act jurisdictional extension by the lower court could be to deny to American carriers in foreign interport trades the right to regulate their activities jointly which they possess in United States foreign commerce by virtue of § 15 of the Shipping Act, and which Congress has found essential for sound maritime development. See 46 U.S.C. § 814.

In addition, the Court of Appeals' decision may undercut the policy of § 14a of the Shipping Act which denies United States port privileges to foreign carriers refusing American carriers admission to "foreign interport" conferences and thus encourages American participation in such rate conferences. Application of the Sherman Act to such conferences would, contrary to clear Congressional intent, make criminal liability an impassable barrier to American carriers wishing to participate in private foreign interport trade.

In short, the Court of Appeals decision in this case, together with the final decision of the Maritime Commission, leaves American carriers wishing to participate in foreign interport trade plying a course between Scylla and Charybdis.*

In sum, the novel jurisdictional question presented in this case has far reaching importance for American carriers as well as substantial legal importance.

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* The practical effect of the lower court's casual suggestion that the Commission might have erred in its own view of its own Shipping Act jurisdiction (p. 22a, *infra*) in resolving this policy conflict is, of course, completely unclear at this juncture.

Because this case poses the legal issue free of factual dispute, and because of the existing policy conflict between the decisions of the Court of Appeals and the Maritime Commission, there are compelling reasons for plenary review by this Court.*

B. The Decision Below Assigns Legal Significance to AID's Financing Involvement in the Far East Interport Trade Contrary to This Court's Decision in United States v. Concentrated Phosphate Export Ass'n, to the Detriment of AID Operations.

In an attempt to bolster its prima facie nationality jurisdiction principle, the lower court constructed "a definite nexus with significant interests of the United States" for the wholly foreign Far East interport trade based on AID's involvement. (p. 19a, *infra*). The court focused on the undisputed fact that AID's restrictions on the financing of cargo carried in foreign bottoms were designed to encourage commercial utilization of American flag carriers and that the largest part of AID financed cargo in this trade was carried by American vessels. *Ibid.*

Without basis in the record, and in direct contradiction of the findings of the Maritime Commission, the court then attempted to analogize this purely financial involvement of AID in the Far East interport trade to AID's activities in relation to the commodity purchases at issue in *United States* v. *Concentrated Phos-*

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* The jurisdictional posture of the case poses no barrier to *certiorari*. *Chicago* v. *Atchison T., & S.F. Ry.*, 357 U.S. 77 (1958); *Vermilya Brown Co.* v. *Connell*, 335 U.S. 377 (1949); *Henslee* v. *Union Planters' Nat'l Bank & Trust Co.*, 335 U.S. 595 (1949).

phate Export Ass'n No. 29 (Oct. Term 1968). (pp. 19a-20a, *infra*).

Actually, based on an official affidavit from AID's Administrator submitted by respondents, the Maritime Commission found as a fact that "neither AID nor any other agency of our Government participated in any of the commercial or shipping transactions. AID's concern began and ended with its role as a financier." (pp. 4c-5c, *infra*).

In *United States* v. *Concentrated Phosphate Export Ass'n, supra* at p. 9, this court held that "the economic reality of the relevant transactions" was the key to the legal importance of AID participation and denied the Webb-Pomerene exemption because the sales involved were essentially sales to our Government.

Here, in direct opposition to *Concentrated Phosphate*, AID did *not* select carriers, did *not* book space, did *not* enter into ocean-carriage contracts and did *not* pay the bill. (p. 5c, *infra*). AID merely offered financing terms which increased the commercial attractiveness of United States flag vessels to foreign shippers. Thus, the "economic reality" of the Far East interport trade, and AID's limited involvement, negates the basis and rationale for importation of Sherman Act concepts into such wholly foreign ocean carriage.

Actually, if AID's limited involvement in the Far East interport trade were held to create Sherman Act jurisdiction, AID's foreign operations would be made less effective.

For example, if American carriers engaged in foreign interport trade under otherwise exempt conferences

faced the risk of Sherman Act criminal prosecution merely by carrying AID cargo, they might well decide to refrain from such carriage and thus undercut the Congressional policy of encouraging maximum American participation in such trade.

Moreover, foreign commodity suppliers might well hesitate to participate in AID financed transactions for fear that commercial arrangements lawful in their own countries could fall afoul of the Sherman Act, on pain of criminal prosecution or treble damages to American competitors claiming injury from such foreign arrangements.

In sum, the factual polarization between this case and *Concentrated Phosphate* would permit this Court to delineate the boundaries of its "economic reality" theory of Sherman Act jurisdiction in AID programs and thus presents further substantial reason for granting of the writ.

C. The Decision Below Improperly Limits the Application of the Doctrine of Collateral Estoppel and Curtails the Practical Effectiveness of the Doctrine of Primary Jurisdiction in Expert Administrative Determinations.

Under the leadership of this Court, the doctrine of primary jurisdiction has developed to provide "a division of functions between court and agency." *Federal Maritime Board* v. *Isbrandtsen Co., Inc.*, 356 U.S. 481, 498 (1958). Primary jurisdiction requires that antitrust actions in regulated industries be stayed pending the type of administrative proceeding which has already occurred in this case and which is required both to eliminate policy conflicts between court and agency and because "the factual issues can often be handled best by the administrative agency in the light

of its extensive experience in dealing with the industry." *Maddock & Miller, Inc.* v. *United States Lines*, 365 F.2d 98, 102 (2d Cir. 1966).*

Because of the increasing frequency of primary jurisdiction referrals and the time and energy spent in contests before administrative agencies, it is of critical importance that agency fact findings on contested, relevant issues in areas of agency expertise be given the fullest respect in subsequent judicial proceedings between the same parties.

The lower court, while paying lip service to the doctrine of collateral estoppel, sharply limited its scope, contrary to the overwhelming weight of authority, because the Federal Maritime Commission's "determination rested solely on the standards of the Shipping Act of 1916." (p. 6a, *infra*).

Actually, as the initial and final decisions of the Maritime Commission make clear, respondents vigorously asserted before that agency that Sherman Act principles should govern jurisdiction under the Shipping Act. (p. 9c, *infra;* J.A. 88). Based on later-abandoned claims of carriage of Government-owned cargo transshipped in the Far East and vague assertions of headquarters and repair activities in the United States, respondents attempted to prove to the Commission that the alleged interference with their

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* See *Carnation Co.* v. *Pacific Westbound Conference*, 383 U.S. 213, 224 (1966); *Far East Conference* v. *United States*, 342 U.S. 570 (1952); *United States Navigation Co.* v. *Cunard Steamship Co.*, 284 U.S. 474 (1932). See also *Carter* v. *American Telephone & Telegraph Co.*, 365 F. 2d 486, 498-500 (5th Cir. 1966); *McCleneghan Co.* v. *Union Stock Yards Co.*, 298 F. 2d 659, 670 (8th Cir. 1962) (staying antitrust suits pending administrative proceedings in other regulated industries).

activities substantially affected United States foreign commerce.

To be sure, the Maritime Commission rejected the applicability of Sherman Act jurisdictional principles as a matter of Shipping Act interpretation. (p. 4c, *infra*).

However, the Commission *found as a fact*, affirming its initial decision, that even under Sherman Act principles the allegedly unlawful activities "neither directly nor materially affected our foreign commerce." (p. 9c, *infra*).

Thus, it would not have been enough for respondents to reverse the Commission's Shipping Act interpretation on appeal. They would further have been required to overthrow the Commission's factual rejection of their position, based on expert administrative review of the extensive and fully contested record, in order to assert Shipping Act jurisdiction even under the broadest Sherman Act jurisdictional principles.*

It is well established that "determinations of fact, and mixed law and fact" are "conclusive in subsequent

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* In view of the lower court's gratuitous but pregnant observation that "it may well be . . . insofar as agreements affecting foreign commerce are concerned, the Commission was in error in its narrow view of Shipping Act jurisdiction," the possibility of reversing the Commission's legal ruling was not at all remote in the event of direct appeal of the Commission's decision to *this* Court of Appeals. (p. 22a, *infra*)

The real question *here* is whether respondents are entitled to retry collaterally, in the guise of antitrust attacks, the Commission's factual holding that "the AFBO agreement neither directly nor materially affected our foreign commerce." (p. 9c, *infra*), after defaulting on their statutory rights of direct appeal. 28 U.S.C. § 2343.

proceedings" between parties who have once litigated them. *Yates* v. *United States,* 354 U.S. 298, 336 (1957); see Moore, *Federal Practice,* ¶ 0.441[1] (citing cases). Moreover, alternative holdings on contested issues warrant similar collateral estoppel effect. Moore, *supra,* ¶ 0.443[5].

Thus, traditional application of the doctrine of collateral estoppel in this case required dismissal of respondents' complaint for failure to establish the essential factual prerequisite of Sherman Act jurisdiction —i.e., a direct or substantial effect on the commerce of the United States with foreign nations.

The lower court's refusal to do so improperly curtailed this salutary doctrine, so essential to prevent multiple and collateral litigation, in an area where its broadest possible application is essential to give due regard to the finality of administrative determinations in regulatory matters.

The findings of the Maritime Commission in this case are final. There is no doubt that the issues were fully litigated between these parties and known to be of importance before the Commission.

Thus, certiorari is additionally warranted to resolve in unclouded circumstances the critical question of the scope to be accorded to regulatory agency findings, in an area of agency expertise, in subsequent judicial litigation between the same parties.

CONCLUSION

For the reasons set forth, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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States Steamship Company;
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(Petitioners Lykes Bros.
Steamship Co., Inc.;
United States Lines Company;
Alcoa Steamship Company, Inc.;
Bloomfield Steamship Company;
Central Gulf Steamship
Corporation;
Prudential Lines, Inc.;
Stevenson Line, Inc.;
Stockard Shipping Co., Inc.;
American & Gulf Flag
Berth Operators;
American Union
Transport, Inc.;
Farrell Lines, Inc.;
Matson Navigation Company;
Waterman Steamship
Corporation;
American Export Isbrandtsen
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Moore and McCormack Co., Inc.;
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December 30, 1968